

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 31 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)

MM Docket No. 93-89)

AURIO A. MATOS)

File No. BPH-911114MS)

LLOYD SANTIAGO-SANTOS and)
LOURDES RODRIGUEZ BONET)

File No. BPH-911115MP)

For Construction Permit for a)
New Station on Channel 293A)
in Culebra, Puerto Rico)

To: The Honorable Joseph P. Gonzalez
Administrative Law Judge

**OPPOSITION TO
PETITION TO ENLARGE ISSUES**

Lloyd Santiago-Santos and Lourdes Rodriguez Bonet ("Santos and Bonet") as provided for in the Commission's Rules, submits this its Opposition to the Petition to Enlarge Issues filed by Aurio A. Matos ("Matos") on August 9, 1993. Santos and Bonet requested by Motion filed August 20, 1993 an extension of time to August 31, 1993, to file this Opposition.

In support thereof, the following is shown:

Petition Not Timely Filed

1. Matos seeks to enlarge the issues to include public file and misrepresentation issues against Santos and Bonet. However, as argued below, not only was the Petition not timely filed, there is no substantive justification for the requested additional issues.

No. of Copies rec'd
List ABCDE

46

2. Section 1.229 of the Commission's Rules requires motions to enlarge to be filed within 30 days of the release of the designation order, or in the case of motions based on new facts or newly discovered facts, within 15 days after such facts are discovered by the moving party. See Mark L. Wodlinger, 62 RR 2d 888 (ALJ 1987) and High Sierra Broadcasting, 57 RR 2d (1985).

3. Matos claims that Santos and Bonet have failed to maintain a public file in Culebra, the proposed city of license, and Matos claims that this fact was only discovered at the depositions of Santos and Bonet on June 24, 1993. However, the Santos and Bonet application has been on file since November, 1991. Reasonable diligence on the part of Matos could have verified information concerning the status of the Santos and Bonet public file months before the August 9, 1993 Motion to Enlarge. The publication with respect to the hearing appeared in "El Vocero de Puerto Rico" on May 12, 13, 19 and 20, 1993. It identified the then location of the public file. The publication of the notice of filing of the application appeared in "El Nuevo Dia Domingo" on December 11, 15, 17 and 19, 1991. It also identified the then location of the public file. Thus, Matos with minimal effort could have ascertained the location of the public file as early as December 11, 1991. Yet, he waits until the eve of the proposed hearing to bring this matter to the attention of the Commission. The conclusion is inescapable,

therefore, that the material upon which the request for the designation of a public file issue is based was in Petitioners' possession as of June 22, 1993, the first publication of the hearing notice and with minimal effort was ascertainable as of December, 1991, the publication of the filing notice. It was incumbent upon him to file his motion to enlarge the issues to include a public file issue within fifteen days of at least June 22, 1993. See Memorandum Opinion and Order by Presiding Judge released August 6, 1993, Mimeo 32127.

4. Matos has already filed two separate Petitions to Enlarge in this proceeding already. Both have been denied by the Presiding Judge. While we recognize the importance of matters of decisional significance being presented to the Commission for determination, there comes a point when finality is to be preferred to continuous efforts at enlargement. We have arrived at that moment in this proceeding. This is particularly true when measured against the lack of decisional significance of the proposed issue, even assuming the allegations to be true. See Jimmie H. Howell, 46 FCC 2d 1150, 1155 (Rev. Bd. 1974).

No Basis For Addition Of Public File Issue

5. Assuming arguendo this matter is considered on its merits, not withstanding the untimeliness of the motion, there is no basis for the additional issue. A public file has been maintained since the application was filed, for

which publication was made. The correction of the location to Culebra has been accomplished. There is no indication that anyone other than Matos ever desired or attempted to review the application in connection with the public file. Publication with the correct reference has been accomplished. See Statement of Publication dated August 20, 1993.

6. In his Petition, Matos cites case precedent to support his position that a public file issue should be added against Santos and Bonet. However, the cases cited stood for questionable claims by applicants relative to their station file. In Visionary Radio Euphonics of Lake County, Inc., 55 RR 2d 269, 270 (1984), the Review Board added an issue because "[V]isionary's explanation raises more questions than it answers." Here the applicants made an error and corrected the error with no appearance that there was an "injury or prejudice [which] occurred to the parties or the public." Jimmie H. Howell, supra at 1155.

**No Basis for \$1.65
or Misrepresentation Issues**

7. With respect to the alleged \$1.65 and misrepresentation issues, the facts do not support the wishful thinking of Matos. The application form, the FCC Form 301, does not require the identification of the public file location in the application itself. Therefore, since there is nothing listed or reported in the application, there can be no re-

quirement under §1.65 to amend if there is a change in the public file location. See Tung Broadcasting Co., 23 RR 2d 1185 (Rev. Bd. 1972).

8. As to the proposed issue concerning abuse of Commission processes by misrepresenting facts concerning the establishment of public file during a deposition, the factual predicate, i.e., a misrepresentation of a material fact in a presentation to the Commission, is missing. The alleged misstatement occurred in depositions, part of the discovery process, not in a presentation to the Commission. To our knowledge, the transcripts have yet to be filed with the Commission.

9. It is appreciated that depositions are under oath and that misstatements or dissembling are not virtues that endear one to the Commission, but in this situation, the matter has been taken out of context. The statements made by Lourdes Bonet and Lloyd Santiago-Santos in the depositions (Transcript Pp. 19-20 and 30 attached as Exhibits C & D to the Petition to Enlarge) were not false and certainly do not rise to a deliberate misrepresentation. Lloyd Santiago-Santos sent the application to Culebra on June 23, 1993 to be picked up by Joseph G.A. Fournier and delivered to the City Hall. Mr. Santiago-Santos confirmed that the package had been delivered by Mr. Fournier. See Declaration of Lloyd Santiago-Santos attached as Exhibit A. Mr. Fournier has

confirmed that he picked the application up on June 23, 1993 and delivered it to City Hall. See Exhibit B attached hereto.

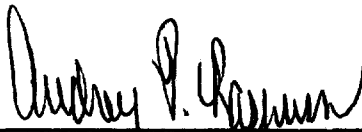
10. Section 1.229 requires more to establish a prima facie case of misrepresentation. This is a serious allegation, and it is not taken lightly by Santos and Bonet. However, as shown herein, there is simply no factual predicate for the claim even assuming that a misstatement in a deposition in and of itself can be construed as a misrepresentation to the Commission.

WHEREFORE the premises considered, the Petition to Enlarge should be denied since it was not timely filed. To consider a matter of questionable decisional significance at this late date in the process disserves the goal of finality. Assuming arguendo that the matter is considered on its merits, it is submitted that Matos has not demonstrated facts with the specificity required by §1.229 which show any deliberate intent on the part of Santos and Bonet to circumvent the Commission's Rules or to misrepresent any facts either in their application, publication notices or depositions. Accordingly, the Motion should be denied.

Respectfully submitted,

**LLOYD SANTIAGO-SANTOS
AND
LOURDES RODRIGUEZ BONET**

By:



David L. Hill
Audrey P. Rasmussen
Their Attorneys

O'Connor & Hannan
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006-3483
(202) 887-1400

Dated: August 31, 1993

4011h

D E C L A R A T I O N

I, Lloyd Santiago-Santos, do hereby state the following:

1. On June 23, 1993, I delivered a copy of the application and amendment for a construction permit, for a new FM Station on Channel 293A in Culebra, Puerto Rico filed by myself and Lourdes Rodriguez Bonet under FCC File No. BPH-911115MP, to the Flamengo Air Link counter at San Juan airport for Flight at 8.30 AM to Culebra to be picked up by Joseph G.A. Fournier in Culebra.
2. I had arranged for Joseph G.A. Fournier to deliver the application to the Culebra City Hall to Mr. Feliciano, the Vice Mayor of Culebra, to maintain in the public file.
3. I confirmed by telephone on June 23, 1993, that Joseph G.A. Fournier had received the package at the airport and that he had delivered it to City Hall.
4. On August 10, 1993, following receipt of the Petition to Enlarge Issue which claimed that we had

no public file at Culebra, I called Mr. Fournier, who again assured me that he had delivered it to City Hall. However, when I called City Hall, the file could not be located.

5. Therefore, on August 13, 1993, I personally went to Culebra and presented another application package to Roberto Feliciano - Vice Mayor at the City Hall. It remains at the City Hall.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on August 25, 1993.


Lloyd Santiago-Santos

DECLARATION

I, Joseph G.A. Fournier, social security number 016-30-8279, of legal age, single and a resident of Culebra, Puerto Rico, do hereby declare:

1. That my name and personal circumstances are as mentioned above.

2. That on June 23, 1993, I personally went to the Flamingo Air Link counter at Culebra airport to pick up an envelope, addressed to my personal attention, which contained the engineering and radiation documents of the application of Mr. Lloyd Santiago and Lourdes Rodriguez-Bonet, for the construction of an FM radio station in Culebra, which was personally delivered to the town of Culebra the same day leaving it with a government employee with the instructions to take it to Mr. Feliciano, vice-mayor.

I pledge the foregoing evidence today, August 13, 1993 in Culebra, Puerto Rico.

Joseph G.A. Fournier

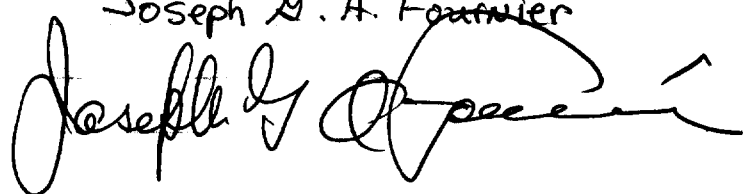
Declaración Jurada

Yo Joseph G. A. Fournier, con el seguro social # 016-30-8279, mayor de edad, soltero y vecino de Culebras, Puerto Rico.

Bajo el más formal juramento declaro lo siguiente

- 1- Que mi nombre y demás circunstancias personales son las antes mencionadas.
- 2- Que el día 23 de junio de 1993 me persone al aeropuerto de Culebra al counter de Flamenco Air Link y recogí un sobre dirigido a mi persona el cual contenía la ingeniería y documentos de la radicación del permiso de Construcción del Sr. Lloyd Santiago y Lourdes Rodriguez Bonet para establecer una estación de radio FM. en Culebra, la cual entregue personalmente al municipio de Culebra ese mismo día dándole a una empujada gubernamental en dicho municipio con instrucciones de llevarlo al Sr. Feliciano vice alcalde.

y para así constar juro y firmo la presente declaración jurada hoy 13 de agosto de 1993 en Culebra, Puerto Rico.

Joseph G. A. Fournier


DECLARATION

I, Linda H. Aguirre, under penalty of perjury and pursuant to Section 1.16 of the Rules of the Federal Communications Commission, do hereby declare:

1. I am fluent in the Spanish and English languages and have had experience in translating documents between the two languages.

2. I have reviewed the English and Spanish versions of the "Declaration" of Mr. Joseph G. A. Fournier. Based on my review of the documents and fluency in the two languages, I certify that the documents are fully and correctly translated.

3. My declaration is not offered for the purpose of asserting the truth of the matters asserted, but only as a representation that the documents are accurate translations.



Linda H. Aguirre

Dated: August 25, 1993

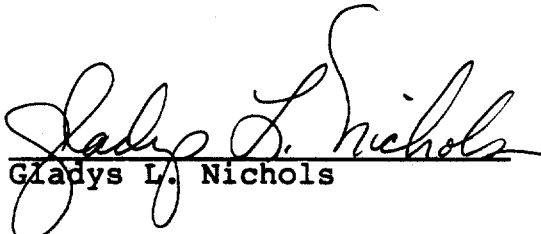
CERTIFICATE OF SERVICE

I, Gladys L. Nichols, do hereby certify that on this 31st day of August, 1993, the foregoing **OPPOSITION TO PETITION TO ENLARGE ISSUES** was served to the following persons by First Class Mail:

* The Honorable Joseph P. Gonzalez
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 221
Washington, D.C. 20554

Gary Schonman, Esq.
Hearing Branch
Federal Communications Commission
STOP CODE 1800C4
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Scott C. Cinnamon, Esq.
John B. Kenkel, Esq.
Kenkel & Associates
1901 L Street, N.W.
Suite 200
Washington, D.C. 20036


Gladys L. Nichols

* Hand Delivered